

**FRANCHISE TAX BOARD
MINUTES
SEPTEMBER 7, 2005 MEETING**

The Franchise Tax Board met in open session at 10:00 a.m. at the State Board of Equalization, 450 N Street, Hearing Room 121, Sacramento, California. Present were Hon. Steve Westly, Hon. John Chiang, and Hon. Tom Campbell.

Franchise Tax Board

Staff Participating:

Will Bush, John W. Davies, Donald L. Buxton, Brian Putler, Anne Miller, Cathy Cleek, Craig Swieso, Ben Miller, Frank Lanza, Phil Spilberg, Doug Powers, Carl Joseph, Pat Bittner, and Colleen Berwick.

Others Participating:

Lenny Goldberg, California Tax Reform Association; Gina Rodriguez, Spidell Publishing, Inc.; Jeffrey Vesely, Pillsbury, Winthrop, Shaw & Pittman, LLP; Barry Weissman, PricewaterhouseCoopers LLP; Teresa Casazza, California Taxpayers Association; Katherine Hatch, American Electronics Association; Scott Baugh, Mayer, Brown, Rowe and Maw, representing Computer & Communications Industry Association; Steven Yin, Hewlett-Packard Company; Ray Rossi, Intel Corporation; Matt Sutton, California Manufacturers and Technology Association; Larry McCarthy, California Taxpayers Association; John McBeth, Franklin Templeton Investments; David Doerr, California Taxpayers Association; and Bernard McKay, Intuit Inc.

Item 1. – Approval of Board Minutes

The minutes of the June 15, 2005, Franchise Tax Board meeting were unanimously approved (3-0).

Item 2. – Amnesty

a. Legislative Matters

The Board received a staff report regarding efforts undertaken to identify the "unintended consequences" of amnesty for clean up and meetings held with interested parties.

The Board heard from the following member of the public regarding this Agenda Item:

Gina Rodriguez, Spidell Publishing, Inc. with respect to MR 05-30

Following discussion with respect to this Agenda item, during which Mr. Westly expressed support for AB 1614, the Board voted unanimously (3-0) to approve the following Miscellaneous Requests (MRs):

MR 05-27 – Authorize Chief Counsel to relieve amnesty penalty, alternative 2.

MR 05-28 – Convert amnesty penalty to interest.

MR 05-29 – Provide relief from amnesty penalty for post-amnesty law changes.

MR 05-31 – Equalize underpayment and overpayment rates for corporations.

The Board voted unanimously (3-0) to postpone action on MR 05-30 (Relief from Minimum Franchise Tax, Annual Tax, and Amnesty Penalty) pending further development.

The Board voted unanimously (3-0) to approve the following proposed solutions and directed staff to return to the Board with draft legislative proposals for those solutions:

Proposed solution #1 (Tab 11) (Eliminate amnesty for taxpayers that made protective claims, but revised to require good faith (more than trivial) payment.

Proposed solution #13 (Tab 12) (Exception to amnesty penalty for taxpayers in audit, protest, appeal, settlement, or litigation.

The Board took no action with respect to Proposed solution #14 (Tab 13) (Eliminate post-amnesty penalty for certain individuals). The Controller directed FTB staff to work with Member Chiang and his staff to develop draft language for Proposed solution #14.

b. Administrative Matters

The Board received a staff report on the processing of audits and protests of "Protective Claims." The Board also received a staff report with respect to the adoption of the Spidell Publishing/California Taxpayers Association interpretation of "due and payable."

The Board heard from the following members of the public regarding this Agenda Item:

Larry McCarthy, President, California Taxpayers Association

Jeffrey Vesely, Pillsbury Winthrop Shaw & Pittman, LLP

Steven Yin, Hewlett-Packard Company

Ray Rossi, Intel Corporation

Gina Rodriquez, Spidell Publishing, Inc.

Matt Sutton, California Manufacturers and Technology Association

Katherine Hatch, American Electronics Association

Item 3. - Tax Gap

The Board received a staff report on the tax gap. The Chair asked staff to look at the various ideas suggested in the symposiums and report back at perhaps the next meeting of the Board about 2-3 of the most promising ideas staff is pursuing to address the tax gap.

The Board heard from the following members of the public regarding this Agenda Item:

Gina Rodriquez, Spidell Publishing, Inc.

David Doerr, California Taxpayers Association

Item 4. – Regulation Matters

- a. Possible Draft Proposed Regulation 25137-14 (Taxation of Mutual Fund Service Providers)

The Board heard from the following member of the public regarding this Agenda Item:

John McBeth, Franklin Templeton Investments

The Board voted unanimously (3-0) to approve the staff request to hold a symposium.

- b. Draft Proposed Regulation 25106.5-11 (Election to File a Group Return)

The Board received a staff report on this regulation.

- c. Draft Proposed Regulations 24411 and 25106.5-1 (Ordering of Dividend Payments)

The Board received a staff report regarding statutory construction of the ordering of distributions portion of the *Fujitsu* opinion.

Mr. Campbell submitted a memo directed to Gerald Goldberg, Executive Officer, Franchise Tax Board, stating his tentative views regarding the Court of Appeal's decision on *Fujitsu*.

The Chair directed that Mr. Campbell's memo be placed on the Franchise Tax Board's Website.

The Board heard from the following member of the public regarding this Agenda Item:

Barry Weissman, PricewaterhouseCoopers

- d. Draft Proposed Regulation 25110(d)(2)(F)3 (Deductions with Respect to Non-Effectively Connected Income)

The Board received a staff report on the second symposium.

Item 5. – Deduction of Mello-Roos Taxes

The Board received a brief staff report regarding taxpayer education efforts with respect to Mello-Roos taxes and the deductibility of those taxes.

The Board heard from the following member of the public regarding this Agenda Item:

David Doerr, California Taxpayers Association

Item 6. – Writings Under Bagley-Keene

The Board received a staff report regarding the distribution of written materials prior to the Board meetings.

The Board heard from the following members of the public regarding this Agenda Item:

Lenny Goldberg, California Tax Reform Association
David Doerr, California Taxpayers Association

Item 7. – Administrative Matters

FY 06/07 BCP's – Board action.

1. Abusive Tax Shelters – Legal Workload
2. Outside Counsel and Case Expert Contracts
3. Processing Equipment Replacement
4. ReadyReturn
5. Court Ordered Debt (COD) Expansion

The Board heard from the following members of the public regarding BCP 4, ReadyReturn:

Scott Baugh, Computer & Communications Industry Association
Lenny Goldberg, California Tax Reform Association
Teresa Casazza, California Taxpayer's Association
Bernard McKay, Intuit Inc.

The Board voted 2-0 (Mr. Campbell abstaining) to approve BCP 4, ReadyReturn.

(Deputy Controller Marcy Jo Mandel assumed responsibility as Chair for the remainder of the meeting.)

The Board voted 2-0 (Mr. Campbell abstaining) to approve BCP 1, 2, 3, and 5.

(Chief Deputy Audrey Noda assumed responsibility from Mr. Chiang for the remainder of the meeting.)

Item 8. – Child Support

The Board received an update on the Child Support project.

Item 9. – Executive Officer's Time

Mr. Bush thanked Mr. Gerald H. Goldberg for 25 years of outstanding public service as Executive Officer of the Franchise Tax Board.

Item 10. – Board Members' Time

Mr. Campbell announced Mr. Buxton's retirement and thanked him for being a superb member of this team.

Ms. Noda thanked Mr. Buxton on behalf of Mr. Chiang.

Ms. Mandel announced the remaining agenda for the Closed Session pursuant to Government Code section 11126.3.

The meeting was adjourned at 12:53 p.m.

Board Liaison

Date